the market. While there may be some things said in that opinion tending to support the claim of the plaintiff, nevertheless, the language used must be construed in connection with the facts of that case.

In the case at bar the plaintiff agreed to manufacture lumber of specified sizes and kinds as required by the American Bureau of Shipping to be used in the construction of these tug boats, which sizes were not standard and could not be sold upon the general market, but were of quality and size suitable for that particular purpose and none other. From this it appears that the plaintiff was a sub-contractor who had undertaken to manufacture and supply the specific materials necessary for the construction of the tugs which McLouth had contracted to construct for the Fleet Corporation.

In *Todd Dry Dock & Construction Corporation* v. *Iron Works*, 289 Fed. 217, it was held that the provision of the Act of June 5, 1917, authorizing the Fleet Corporation to modify, suspend or cancel any existing contract is without limitation and applies to contracts made by the government or its agents for ships and material and extends not only to the principal contracts, but to all sub-contracts for material and labor, the performance of which would impose further obligation on the government, and that this provision of the act was read into every contract, and was notice to and binding on all contractors and sub-contractors, and precludes recovery of anticipated profits from any contract or sub-contracts so cancelled. That case and *American Chain Co.* v. *Interstate Iron & Steel Co.*, *supra*, were both pending in the Supreme Court at the same time, upon petitions for writs of Certiorari which petitions were denied on October 8 and October 22, 1923, respectively. (263 U. S. 700, 709.)

This, we think, is the correct construction of these acts. They were passed to meet the exigencies of war, and because of the impossibility of knowing when the war would end, Congress wisely provided for the cancellation of these contracts to prevent the needless expenditures of public funds, and the waste of material in the construction of ships and tugs no longer needed by the government for war purposes or for any

other purpose. Just compensation would necessarily include and damages the principal contractor would be compelled to pay upon any contracts or commitments for material or labor. If sub-contractors are entitled to damages for breach of contract based upon the profits they would earn if these contracts were completed, the benefits of the provision of this Act, in reference to just compensation, would be substantially, if not wholly, lost to the government. The facts of this case are substantially identical with the facts involved in *Todd Dry Dock & Construction Corporation* v. *Sumner Iron Works, supra*. In that case the Supreme Court denied cretiorari. For this reason the decision in that case is especially persuasive.

Judgment affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, ARTHUR B. MUSSMAN, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of Ingram-Day Lumber Company v. Sydney C. McLouth, et al., No. 4487, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 24th day of July, A. D. 1926.

ARTHUR B. MUSSMAN,
[SEAL] Clerk of the United States Circuit Court
of Appeals for the Sixth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 23, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4161)